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July 8, 2002



07-11-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #26

United States Patent and Trademark Office  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, VA 22202 - 3513

*Exhibit*

TRADEMARK TRIAL AND  
APPEAL BOARD  
02 JUL 17 AM 8:36

AMENDMENT TO RESPONSE TO OPPOSITION NO. 91151757


Sir / Madam,

Kindly accept corrections to the typographic errors in lines : 28; 34; 41 of page 2 . The dates are incorrectly entered as February 22, 2002 . The dates should be entered as January 22, 2002. I would also like to enter a correction to another typographic error in line 37 of page 3, the word Mark Type should be replaced with the word Drawing Type .

Due to the fact that Serial No. 75/456,127 is now registered , I would like to delete all reference in the previous reply to this serial number. I hereby replace all reference to Serial No. 75/456,127 in lines 16; 18; & 31 of page 3 with the Registered No. 2588737.


CERTIFICATE OF MAILING

I Lenworth Alexander Hyatt hereby certify that this amendment along with a revised response to Opposition No. 91151757 was deposited by Certified Priority Mail in the US Postal Service on this day July 8, 2002 by me.

  
Lenworth Alexander Hyatt

CERTIFICATE OF SERVICE

I Lenworth Alexander Hyatt hereby certify that a True Copy of this amendment along with revised response to Opposition No. 91151757 was concurrently mailed to the attorneys at Fish & Richardson by Certified Priority Mail on this day July 8, 2002.

  
Lenworth Alexander Hyatt

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BY CERTIFIED PRIORITY MAIL

REPLY TO OPPOSITION NO. 91151757 COLUMBIA INSURANCE COMPANY

&

H.H. BROWN SHOE COMPANY, INC.

VS.

LENWORTH ALEXANDER HYATT

1. I disagree Columbia Insurance Company is the owner of U.S. Trademark Registration NO. 1,981,455 ( H- MARK).

Proof of rightful ownership of this mark is not established in this filing. According to correspondence mailed to me by the attorneys on December 10, 2001, a print of U.S. Trademark Electronic Search System (TESS) , Owner / Registrant is H. H. Brown Shoe Company, Inc Corporation Delaware, 124 West Putnam Ave., Greenwich , Connecticut 06830 ( see Exhibit A : Correspondence from Fish & Richardson P.C. )

2. I disagree H.H. Brown Shoe Company, Inc is licensed by Columbia Shoe Company to use the H & Crown Design trademark.

This allegation has further complicated the issue of rightful ownership of U.S. Trademark No. 1,981, 495. The opposition initially alleged that "Columbia Insurance Company is the owner of U.S. Trademark Registration No. 1,981,495" but now alleged "H.H. Brown Shoe Company, Inc. is licensed by Columbia Shoe Company to use the H& Crown Design trademark.". The attorneys from Fish & Richardson P.C. in lines 9 &10 of page 1, of Exhibit A allege that the owner of U.S. Registration No. 1,981,495 is Columbia Insurance Company ( "Columbia Insurance" ) and its licensee is H.H. Brown Shoe Company Inc. ( "H.H. Brown" ). When did Columbia Shoe Company assumed ownership of this mark? Is there a Columbia Shoe Company? Where is it located ? Is Columbia Shoe Company located in the U.S.A.? or , Is it located at Bogota, in the Republic of Columbia, South America ?

3. I disagree that, hereinafter Columbia Insurance Company and H.H. Brown Shoe Company Inc should be referred to collectively as Opposers, since the association of these companies, and, or, rightful ownership of this mark is not established in this filing.

4. I disagree Opposers use and have used since 1979, the H & Crown Design trademark in interstate commerce in connection with footwear and the like.

According to Exhibit A : lines 20 & 21 of page 1, the attorneys at Fish & Richardson P.C. states that " H.H. Brown has used the trademark H & Crown since March 5, 1994". A print of the U.S. Trademark Electronic Search System (TESS), also indicate that alleged first use in commerce was March 5, 1994 (See Exhibit B, line 2 ).

5. I disagree I Lenworth Alexander Hyatt, filed Application Serial No. 76/ 242,606 on April 17

2001 on an intent-to-use basis for the mark Crown Design.

I however filed Application No. 76/242,606 as a ' Miscellaneous Design ' for clothing for men, women, children and infants, namely; footwear, pants, headwear, underwear, swimwear, lingerie, shirts, jackets, socks, dresses, blouses, stockings, sweaters, blazers, pajamas, robes, trench coats, sports jerseys, gloves, overall, skirts, jump-suits, leotards, tank-tops, neck-ties, bow-ties, shorts, suits, scarves, handkerchiefs, vests, shawls, blazers (See Exhibit C ).

6. I disagree my mark as applied to footwear, so resemble the previously used H- Crown Design trademark. I further disagree that my design as applied to footwear is likely to cause mistake, or to deceive consumers as to its association with the H- mark .

Where are the evidence to justify these allegations ? I did submit to the Patent and Trademark an amendment to my application Serial No. 76/242,606, on January 17, 2002, and according to the Returned Receipt was received on January 22, 2002. This amendment was to change the status of the application from an Intent-to-Use to an In-use application , however the docket containing the pictures depicting the use of the mark on footwear, among other goods, mysteriously disappeared from my file in The Patent And Trademark Office. When ? Where? and How did the attorneys at Fish & Richardson P.C. saw how I have applied my mark to footwear ? Only a limited amounts of footwear with my mark affixed to them were produced, the production have been temporarily suspended due to this pending opposition. I had foreknowledge of this opposition prior to being notified by The Patent and Trademark office ( See Exhibit D ).

Since my last conversation with Ms. Jean Brown of The Trademark Trial and Appeal Board on March 6, 2002, at approximately 9: 40 AM Eastern Time, The Patent and Trademark Office have not notified me that they had located the missing docket, containing the pictures depicting how I have use my mark on footwear, among other goods, along with the relevant filing documents for an amendment to the registration. I will therefore presume that the docket containing the pictures in question and all related documents are still missing. During my last conversation with Ms. Jean Brown , on March 6, 2002 she informed me that as we were speaking, she was seeing an entry in The Patent and Trademark Office of the filing fee of U.S. \$100, filed for the amendment, as being received on January 22, 2002. She further said, "This is proof that we did received your package, I am making a copy of it".

My first conversation with Ms. Jean Brown in regard to the missing pictures, and the other documents filed for an amendment to Serial No. 76/242,606 was February 28, 2002. During my conversation with Ms. Jean Brown, she told me she saw no record in my file of an amendment to Serial No. 76/242,606 being received by The Patent and Trademark Office on January 22, 2002. Ms. Jean Brown suggested that I faxed a copies of the pictures, and documents filed with proof of mailing. I had also spoken to Judge David Sam in regard to the missing documents. I faxed copies of the pictures, and all related documents along with proof of filing to Judge David Sam instead of to Ms. Jean Brown because he is her superior ( See Exhibit E : Fax Cover Letter ). On February 28, 2002 I also spoke to Ms. Sharie Sheffield of Law Office 109 . Ms. Sheffield is the attorney to whom Serial No. 76/242,606 is assigned. I asked Ms. Sharie Sheffield if she had seen the amendment received by The Patent and Trademark Office on January 22, 2002 ? The reply from Ms. Sharie Sheffield was that, she had not seen my amendment, she also suggested that I made an inquiry at The Intent-to-Use Section, and she gave me the telephone number. I immediately after speaking with Ms. Sharie Sheffield called The

Intent-to-Use Section of the Trademark Office, and I was told they had not seen, or received the amendment for Serial No. 76/242,606 Which was received by The Trademark Office on February 22,2002.

When ? Where? and How did the attorneys at Fish & Richardson P.C. able to conclude that the way I have used my design on footwear so resemble the previously used H and Crown design trademark of opposers ? Where is the evidence?

7. I disagree my design as applied to footwear so resemble the previously uses H and Crown design of opposers. Where is the evidence ? I further disagree that the use of my design on footwear will likely dilute the distinctiveness of opposers trademark. No evidence is presented to show how they have used their mark on footwear, and how my mark is use on footwear for a comparison, to make this conclusion.

8. I disagree the registration of my mark Serial No. 76/242,606 will cause injury and damage to opposers. This allegation is not proven without reasonable doubt. No evidence is presented in this filing to support this allegation.

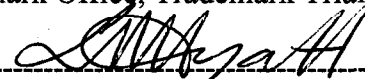
This mark bearing Serial No. 76/242,606 represent the top-half of my other mark Registered No. 2588737 (See Exhibit F ). How could there be a denial of the registration of Serial No. 76/242,606 ? This mark is a replica of the top-half of Registered No. 258873. The two marks are use on footwear among other goods (See Exhibits C & F ). To deny the registration of Serial No. 76/242,606 would be like saying, "It's okay to use a picture of your entire body, but it's not okay to use a picture of your head only".

Based on the facts as presented the opposition filed against Serial No. 76/242,606 should be denied forthwith:

- a) Proof of rightful ownership of the H-Mark in not established in this filing.
- b) No evidence is presented to support the allegations made in this filing.
- c) The date of first use in commerce is contradictory.
- d) No evidence is presented showing how opposers have used their mark on footwear, and how I have used my mark on footwear for comparison, to make a fair ruling.
- e) Opposers have not proven how they could be damage if my mark is registered.
- f) The H-Mark is registered as a Word Mark, and not as a Design.
- g) Serial No. 76/242,606 is the top-half of Registered No. 2588737.
- h) Serial No. 76/242,606 is for registration as a Design Mark, unlike The H-Mark which is a Word Mark ( "H-Mark")
- i) I am not seeking to register Crown Design as my application is incorrectly referred to in this filing.
- j) I am registering a Miscellaneous Design ( See Exhibit C : Drawing Type ).

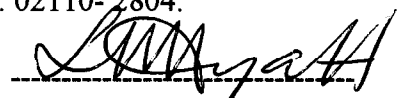
Certificate of Mailing

I Lenworth Alexander Hyatt hereby certified, that on this day July 8, 2002, I deposited by Certified Priority Mail this Revised Reply to Notice Of Opposition No. 91151757 addressed to The U.S. Patent and Trademark Office, Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington VA.22202 - 3513

  
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Lenworth Alexander Hyatt

Certificate of Service

I Lenworth Alexander Hyatt hereby certify that a True Copy of this revised response to Opposition No.91151757 was concurrently mailed on this the day July 8, 2002 ,by Certified Priority Mail to Fish & Richardson, 225 Franklin Street, Boston, MA. 02110- 2804.

  
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Lenworth Alexander Hyatt